

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-5-G - ORDER NO. 2004-366
SEPTEMBER 27, 2004

IN RE: Annual Review of Purchased Gas) ORDER DENYING
Adjustments and Gas Purchasing Policies of) PETITION FOR
South Carolina Electric & Gas Company) RECONSIDERATION BY
) THE SOUTH CAROLINA
) CONSUMER
) ADVOCATE

This matter came before the Public Service Commission of South Carolina (the “Commission”) on a Petition filed by the South Carolina Consumer Advocate (“Consumer Advocate”) for the Commission’s reconsideration of Commission Order No. 2003-652 issued November 17, 2003. In Order No. 2003-652, the Commission ruled on the purchased gas adjustment and gas purchasing practices of South Carolina Electric & Gas Company (“SCE&G” or the “Company”). In his Petition for Reconsideration, the Consumer Advocate alleged three errors by the Commission in Order No. 2003-652: (1) That the Commission’s finding that the gas purchasing practices of SCE&G were prudent is not supported by the facts in the record, (2) that the Commission by ordering SCE&G to file Quarterly Reports in the same format as those ordered in Orders No. 2002-747 and 2002-837 fails to require the Company to address the full issue of the benefits of diversifying gas supplies, and (3) the Commission’s finding that the Industrial Sales

Program (“ISP-R”) should be continued should address the issue of whether the rates charged under this program are discriminatory as compared with firm customers.

As to these arguments, these issues were previously argued by the parties and addressed in Commission Order No. 2003-652, and we find that there is ample evidence contained in the record to support the Commission’s findings and conclusions regarding these issues. There is nothing contained in the Consumer Advocate’s Petition which convinces the Commission that there was any error of fact or law in the consideration of, and weight given to, the evidence concerning the prudence of SCE&G’s purchasing practices. Neither is there anything contained in the Consumer Advocate’s arguments for reconsideration of these three issues which convinces the Commission that there was any error in its previous Order regarding these issues.

Further, the Commission finds that the Consumer Advocate’s arguments regarding failure to provide information concerning the cost of gas supplies using another method, failure to require a different format of SCE&G’s Quarterly Reports, and the possible discriminatory nature of the Industrial Sales Program (“ISP-R”) are groundless for the reasons explained below.

(1) Determination of prudence in SCE&G’s purchasing practices

With regard to the Consumer Advocate’s assertions that SCE&G has failed to provide information concerning the cost of gas supplies using another method and that without such information the Commission could not find SCE&G’s purchasing practices prudent, the Commission finds evidence of record in the testimony in SCE&G’s witness Daniel Ives which supports the conclusion that the Company’s purchasing practices were

prudent. Mr. Ives testified as to how SCE&G contracts to purchase its gas, why those methods are prudent, and whether SCE&G could realize any cost or other savings by purchasing gas from someone other than SCPC. Mr. Ives specifically concluded that SCE&G could not reasonably expect to purchase gas at a lower price than that obtained by SCPC because “[t]he commodity cost of gas purchased by SCE&G would most likely be consistent with the prices paid by SCPC for gas, at prices referenced to the industry’s published index prices.” Prefiled Testimony of Daniel M. Ives at 27. Mr. Ives further concluded that there is no “reason that SCE&G would not follow the same procurement practices and procedures as utilized by SCPC . . . [and as] a prudent purchaser of gas, it would either purchase gas through the same creditworthy suppliers used by SCPC, or alternatively, issue an RFP and purchase from the same, or other, marketers.” Id. Finally, Mr. Ives testified that there is also “no reason to believe that SCE&G would find a set of creditworthy marketers from which to purchase gas that is substantially different from those utilized by SCPC.” Id.

In addition, Martin K. Phalen, Vice President for Gas Operations at SCE&G testified that changes to SCE&G’s supply plan would result in the introduction of unnecessary risk to customers in the areas of capacity releases and unnecessary duplication of services. Prefiled Testimony of Martin K. Phalen at 10. The area of unnecessary duplication of services was also addressed by Mr. Ives who testified that unlike SCPC, SCE&G does not have the internal expertise necessary to make these types of gas purchases and thus SCE&G would incur additional staffing costs and other overhead costs were SCE&G to discontinue its purchases from SCPC. Mr. Ives also

stated that SCE&G, if it were to undertake purchasing its own gas on the interstate natural gas markets, would use processes nearly identical to SCPC's processes. Mr. Phalen also testified that "SCE&G's use of SCPC provides the Company with competitive, open market purchases without the added cost of SCE&G acquiring people and other resources necessary to procure and manage its own gas supply." Prefiled Testimony of Martin K. Phalen at 9-10.

Thus the Commission finds no error in its determination that SCE&G's purchasing practices were prudent because there is sufficient evidence of record to support the Commission's finding of prudence. The record clearly shows that SCE&G's gas purchases were made at market-based commodity prices, that the transportation costs included in SCE&G's purchased gas costs are based on FERC-approved interstate rates and Commission-approved intrastate rates, and that SCE&G's hedging practices, as administered by SCPC, ISP-R sales program, and capacity release transactions are all subject to independent and ongoing review by the Commission.

(2) Failure to require a different format for SCE&G's Quarterly Reports

As to the Quarterly Reports, the Consumer Advocate asserts that failure of SCE&G to address suggestions made by the Consumer Advocate in his letter of May 12, 2003, which was admitted as a hearing exhibit in this case, amounts to failure to address the full issue of the benefits of diversifying gas supplies. The Consumer Advocate asserts that failure of the Commission to order changes to the quarterly reports will result in the same incomplete reports being filed and is contradictory to filing the reports at all. While

not agreeing with the rationale or reasoning of the Consumer Advocate, SCE&G does support discontinuing the quarterly filing requirement.

These quarterly filings were required by the Commission and not by any statutory or legislative mandate. Therefore, the Commission is the entity which determines whether the reports are providing the information which the Commission desires. The Commission has found that these filings provide it with the information necessary to evaluate the prudence of the Company's purchasing practices and finds no reason to discontinue or change these quarterly filings.

(3) Continuation of the ISP-R

The Consumer Advocate asserts that in determining to continue the ISP-R the Commission should address whether the rates charged under the ISP-R are discriminatory as compared to the firm customers. As a basis for this allegation, the Consumer Advocate states that the evidence of record indicated that the ISP-R accounted for 50% of SCE&G's gas supplies but only produced 15% of SCE&G's profits. The Consumer Advocate then asserts that SCE&G's remaining customers, such as small business and residential firm customers, account for the remaining 50% of the gas supply yet account for 85% of SCE&G's profits. From this, the Consumer advocate questions the value of the ISP-R and whether the rates charged are discriminatory.

SCE&G witness Harry L. Scruggs testified that all of SCE&G's customers benefit from the ISP-R because the margins collected from that program help offset the actual fixed costs of the Company doing business. The Consumer Advocate seems to focus on the actual percentage of revenues generated from the ISP-R as compared to the

residential program and seems to ignore the benefits of the ISP-R. One benefit of the ISP-R is the overall reduction in fixed costs enjoyed by all customers, including the residential customers. The Commission has recognized, and continues to recognize, this and other benefits of the ISP-R, and contrary to the assertions of the Consumer Advocate, the Commission cannot find the ISP-R discriminatory based only on the percentages of revenues from the different classes.

Although the percentages of revenues are different, there is nothing in the record to suggest an alternative plan which would benefit any of the classes of consumers. The very nature of the ISP-R requires the establishment of different classes by reducing the fixed costs of gas. If the ISP-R and its “discrimination” were discontinued, it would only result in all consumers, including the residential customers, paying more for gas due to increased fixed costs. As the alleged discrimination in fact benefits those whom the Consumer Advocate alleges are being discriminated against, we decline to find the ISP-R discriminatory.

The alleged price discrimination favoring the firm industrial user in the ISP-R is in place to ensure that gas to these customers remains competitive with alternative fuels. Price discrimination is not prohibited if such prices are given in good faith to meet an equally low price of a competitor, as SCE&G has done here to compete with alternate fuels available to its industrial consumers. Further, there is no price discrimination because SCE&G industrial customers are not competing purchasers with SCE&G’s residential and commercial customers. See, Hoover Color Corp. vs. Bayer Corp., 199 F.3rd 160, 163 (4th Cir., 1999).

In conclusion, the Commission finds that the facts in the record in this case and the applicable statutes and regulations support the Commission's findings and conclusions. Specifically, the greater weight of the evidence in this matter shows that the Company's purchasing practices are prudent.

For the reasons set forth above, the Commission denies the Petition for Reconsideration and reaffirms its findings and conclusions as set forth in Commission Order No. 2003-652.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)